

TRAITÉ DE COOPÉRATION EN MATIÈRE DE BREVETS

PCT

RAPPORT PRÉLIMINAIRE INTERNATIONAL SUR LA BREVETABILITÉ (chapitre I du Traité de coopération en matière de brevets)

(règle 44bis du PCT)

Référence du dossier du déposant ou du mandataire BR79024/DC1	POUR SUITE À DONNER Voir le point 4 ci-dessous	
Demande internationale no. PCT/FR2005/050171	Date du dépôt international (<i>jour/mois/année</i>) 18 March 2005 (18.03.2005)	Date de priorité (<i>jour/mois/année</i>) 22 March 2004 (22.03.2004)
Classification internationale des brevets (8 ^e édition, sauf indication d'une #dition ant#rieure) Voir les informations pertinentes dans le formulaire PCT/ISA/237		
Déposant GALDERMA RESEARCH & DEVELOPMENT		

<p>1. Le présent rapport préliminaire international sur la brevetabilité (chapitre I) est établi par le Bureau international au nom de l'administration chargée de la recherche internationale selon la règle 44bis.1.a).</p> <p>2. Ce RAPPORT comprend un total de 9 feuilles, y compris la présente feuille de couverture.</p> <p>Dans les feuilles jointes, toute référence à l'opinion écrite de l'administration chargée de la recherche internationale doit être entendue, à la place, comme une référence au rapport préliminaire international sur la brevetabilité (chapitre I).</p>																
<p>3. Le présent rapport contient des indications relatives aux points suivants :</p> <table border="0"> <tr> <td><input checked="" type="checkbox"/> Cadre n° I</td> <td>Base de l'opinion</td> </tr> <tr> <td><input checked="" type="checkbox"/> Cadre n° II</td> <td>Priorité</td> </tr> <tr> <td><input type="checkbox"/> Cadre n° III</td> <td>Absence de formulation d'opinion quant à la nouveauté, l'activité inventive et la possibilité d'application industrielle</td> </tr> <tr> <td><input type="checkbox"/> Cadre n° IV</td> <td>Absence d'unité de l'invention</td> </tr> <tr> <td><input checked="" type="checkbox"/> Cadre n° V</td> <td>Déclaration motivée selon l'article 35.2) quant à la nouveauté, l'activité inventive et la possibilité d'application industrielle; citations et explications à l'appui de cette déclaration</td> </tr> <tr> <td><input checked="" type="checkbox"/> Cadre n° VI</td> <td>Certains documents cités</td> </tr> <tr> <td><input type="checkbox"/> Cadre n° VII</td> <td>Certaines irrégularités relevées dans la demande internationale</td> </tr> <tr> <td><input type="checkbox"/> Cadre n° VIII</td> <td>Certaines observations relatives à la demande internationale</td> </tr> </table> <p>4. Le Bureau international communiquera le présent rapport aux offices désignés conformément aux règles 44bis.3.c) et 93bis.1 mais pas avant l'expiration du délai de 30 mois à compter de la date de priorité (règle 44bis.2), sauf si le déposant a présenté une requête expresse à cet égard en vertu de l'article 23.2).</p>	<input checked="" type="checkbox"/> Cadre n° I	Base de l'opinion	<input checked="" type="checkbox"/> Cadre n° II	Priorité	<input type="checkbox"/> Cadre n° III	Absence de formulation d'opinion quant à la nouveauté, l'activité inventive et la possibilité d'application industrielle	<input type="checkbox"/> Cadre n° IV	Absence d'unité de l'invention	<input checked="" type="checkbox"/> Cadre n° V	Déclaration motivée selon l'article 35.2) quant à la nouveauté, l'activité inventive et la possibilité d'application industrielle; citations et explications à l'appui de cette déclaration	<input checked="" type="checkbox"/> Cadre n° VI	Certains documents cités	<input type="checkbox"/> Cadre n° VII	Certaines irrégularités relevées dans la demande internationale	<input type="checkbox"/> Cadre n° VIII	Certaines observations relatives à la demande internationale
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Bureau international de l'OMPI 34, chemin des Colombettes 1211 Geneva 20, Switzerland no de télécopieur +41 22 338 82 70	Date d'établissement du présent rapport 01 November 2006 (01.11.2006)
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Formulaire PCT/IB/373 (janvier 2004)

PATENT COOPERATION TREATY

TRANSLATION

From the
INTERNATIONAL SEARCHING AUTHORITY

PCT

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

To:

Date of mailing **See form PCT/ISA/210**
(day/month/year)

Applicant's or agent's file reference
BR79024/DC1

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/FR2005/050171

International filing date (day/month/year)
18.03.2005

Priority date (day/month/year)
22.03.2004

International Patent Classification (IPC) or both national classification and IPC
A61K47/24

Applicant
GALDERMA RESEARCH & DEVELOPMENT

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☒ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/EP

Authorized officer

Facsimile No.

Telephone No.

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Box No. I Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.

☐

This opinion has been established on the basis of a translation from the original language into the following language

_____, which is the language of a translation furnished for the purposes of international search (under Rule 12.3 and 23.1(b)).

2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material

☐

a sequence listing

☐

table(s) related to the sequence listing

b. format of material

☐

in written format

☐

in computer readable form

c. time of filing/furnishing

☐

contained in the international application as filed.

☐

filed together with the international application in computer readable form.

☐

furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

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Box No. II

Priority

1. ☐ The following document has not yet been furnished:

☐ copy of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(a)).

☐ translation of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date in the claimed priority date.

2. ☒ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43bis.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.

3. Additional observations, if necessary:

The prior applications FR2862540 (E1), FR03/07551 (E2) and FR03/13660 (E3) published on 27.05.2005, 29.12.2004 and 16.06.2005 have the respective filing dates of 21.11.2003, 23.06.2003 and 21.11.2003. They all disclose anhydrous compositions comprising an active ingredient and a silicone agent in organopolysiloxane form.

Application FR04/02911 (filing date 22.03.2004), which constitutes the claim of priority of the present application, is thus not the application which discloses the first subject matter of the present PCT application, partially or completely.

Since at least part of the subject matter previously described was already disclosed in a prior application (E1, E2, E3), application FR04/02911 is not the "first application" within the meaning of PCT Article 8.

Therefore, the claim of priority for the subject matter described in the prior applications E1, E2 and E3 is not valid, and the documents published after the priority date and before the filing date of the present PCT application will be considered to be prior art within the meaning of PCT Rule 64.1 (E4, D2).

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Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims	_____	YES
	Claims	1-18, 20-31	NO
Inventive step (IS)	Claims	_____	YES
	Claims	1-31	NO
Industrial applicability (IA)	Claims	1-31	YES
	Claims	_____	NO

2. Citations and explanations:

1. Reference is made to the following documents:

D1: EP-A-1 062 942 (SHINETSU CHEMICAL CO)
27 December 2000 (2000-12-27)

D2: FR-A-2 850 575 (GALDERMA RES & DEV) 6 August
2004 (2004-08-06)

D3: EP-A-0 679 392 (LAFON LABOR) 2 November 1995
(1995-11-02)

D4: EP-A-0 512 814 (UNILEVER PLC; UNILEVER NV
(NL)) 11 November 1992 (1992-11-11)

D5: WO 01/87344 A (SEIGFRIED BERND G; PIOTROWIAK
RALF (DE); MIKA PHARMA GES FUER DIE ENT)
22 November 2001 (2001-11-22)

D6: WO 85/03434 A (NEUTROGENA CORP) 15 August 1985
(1985-08-15)

D7: WO 97/15295 A (LAFON LABOR; LAURENT PHILIPPE
(FR)) 1 May 1997 (1997-05-01)

D8: EP-A-0 249 193 (AMERICAN CYANAMID CO)
16 December 1987 (1987-12-16)

E1: FR-A-2 862 540 (GALDERMA RESEARCH &
DEVELOPMENT) 27 May 2005 (2005-05-27)

E2: WO 2005/053666 A (GALDERMA RESEARCH &
DEVELOPMENT, S.N.C; PITRE, FRANCK; FREDON,
LAURENT) 16 June 2005 (2005-06-16)

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Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement

- E3: WO 2005/123092 A (GALDERMA S.A; ZANUTTO,
LESLIE; ORSONI, SANDRINE; TONGLLET, EMILIE;
MALL) 29 December 2005 (2005-12-29)
- E4: WO 2004/112798 A (GALDERMA RESEARCH &
DEVELOPMENT, S.N.C; MALLARD, CLAIRE; PITRE,
FRANCK) 29 December 2004 (2004-12-29)
- E5: WO 2006/005845 A (GALDERMA S.A; WILLCOX,
NATHALIE; ORSONI, SANDRINE; MALLARD, CLAIRE)
19 January 2006 (2006-01-19)
- D9: EP-A-0 966 972 (DOW CORNING FRANCE S.A)
29 December 1999 (1999-12-29)

2. The present application fails to comply with the requirement of PCT Article 33(2) since the subject matter of claims 1-18 and 20-31 is not novel in view of the prior art as defined in the implementing regulations (PCT Rule 64(1)-(3)).

Document D1 shows, in examples 10-12, anhydrous vitamin compositions. The subject matter of claims 1-6, 8-17 and 22-30 is thus not novel in view of D1.

Document D2 discloses an anhydrous vitamin D composition for the treatment of psoriasis, comprising silicone derivatives (see examples 4, 5).

The subject matter of claims 1-11, 15-17, 20-22 and 24-31 is thus not novel in view of D2.

Document D3 (see, in particular, the examples, example 12 and the claims) is relevant with regard to the novelty of claims 1-18 and 20-31.

It should be noted that the exclusion of an

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Box No. V

Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement

organopolysiloxane elastomer having a hydrophilic group in claim 1 of the present application does not exclude its presence as a supplement for another organopolysiloxane elastomer.

Examples 10 and 13 of D4 mean that D4 is relevant with respect to the subject matter of claims 1-10, 14-18 and 20-30.

D5 is relevant with respect to the subject matter of claims 1-6, 8-10, 14-15 and 21-31 (see examples 1, 2-6, 8).

D6 is relevant with respect to the subject matter of claims 1-6, 8-10, 12-17 and 20-30 (see examples 1-10).

Document D7 describes compositions comprising organopolysiloxanes having hydrophilic groups (see examples).

D8 is relevant with respect to the subject matter of claims 1-6, 8-18 and 20-30 (see the examples and the claims).

The examples of E4 (in particular, example 5) disclose compositions similar to those of the present application. The subject matter of claims 1-10, 12-18 and 20-31 is thus not novel in view of D4.

3. The present application fails to comply with the requirement of PCT Article 33(3) since the subject matter of claims 1-31 does not involve an inventive step (PCT

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citations and explanations supporting such statement

Rule 65(1)(2)).

Documents D1-D8 and E4 appear to be relevant with regard to the inventive step of the present application. These documents in fact solve the same problem as the present application, i.e. that of producing a medical composition comprising polyorganosiloxanes, which results in a lack of inventive step of the present application with respect to these documents (PCT Article 33(3)), in as much as the novelty of the claims can be restored.

The replacement of a wax with another known wax (claim 19) is a routine option for a person skilled in the art.

International application No.

Box No. VI Certain documents cited

Application No. Patent No.	Publication date (day/month/year)	Filing date (day/month/year)	Priority date (valid claim) (day/month/year)
WO2006/05845	19.01.2006	15.06.2005	17.06.2004
WO2005/123092	29.12.2005	15.06.2005	17.06.2004
FR2862540	27.05.2005	21.11.2003	21.11.2003
WO2005/053666	16.06.2005	17.11.2004	21.11.2003

Kind of non-written disclosure	Date of non-written disclosure (day/month/year)	Date of written disclosure referring to non-written disclosure (day/month/year)
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Form PCT/ISA/237 (Box No. VI) (January 2004)